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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/797,978

03/10/2004

David Clarence Hager

05-902-J

5004

63572 7590 11/05/2007
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EXAMINER

GORDON, BRIAN R

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

11/05/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/797,978	HAGER ET AL.	
	Examiner	Art Unit	
	Brian R. Gordon	1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 3-10-04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 12-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-11, drawn to a seal plate, classified in class 422, subclass 100.
 - II. Claims 12-14, drawn to a multi-well assembly, classified in class 422, subclass 101.
 - III. Claims 15-23, drawn to a method of performing iterative chemical or biological processes, classified in class 436, subclass 177.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require all of the particulars of the subcombination such as the body with upper and lower surfaces. The subcombination has separate utility such as it can be used to seal any type of plate or arrangement of containers that one chooses.

The examiner has required restriction between combination and subcombination inventions. Where applicant elects a subcombination, and claims thereto are

subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

3. Inventions (I and II) and III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the devices may used to practice another method. The devices are not limited to the process as claimed.

4. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

5. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

6. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art due to their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

7. During a telephone conversation with Michael Greenfield on October 18, 2007 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-11. Affirmation of this election must be made by applicant in replying to this Office action. Claims 12-23 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

8. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Objections

9. Claims 2-11 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The claims are not further limiting because the multi-well block and guide plate are not elements of the seal plate. Claim 1 is directed to a seal plate. The multi-well block and guide plate are

not positively claimed as elements of the seal plate, but are mentioned in the narrative form as describing how they both are intended to be used with the claimed seal plate. All subsequent claims depend from claim 3, as such those claims are not further limiting. The seal plate can be used with any plate or containers one chooses. The plate only requires a body with upper and lower surfaces and sealing elements depending from the upper surface.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Roberts et al. US 20030143124.

Roberts et al. disclose a well plate seal that includes a matt heading a plurality spaced apart wells (that form protrusions on one surface) for engaging and sealing a plurality of exit ports in a multi -well filtration/extraction plate (abstract).

12. Claims 1-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Berray et al. US 20020187077.

Berray et al. disclose a flexible elastomer closure plug mat presents a plurality of protruding hollow septa closure plugs depending from the mat's lower face. The mat and protruding closure plugs are preferably formed of silicone rubber, with a thick layer of polytetrafluoroethylene or Teflon durably bonded to the lower face of the mat and to the outer faces of all of the arrayed plurality of closure plugs. The arrayed plurality of closure plugs are dimensioned for telescoping insertion into the open tops of a corresponding plurality of sample vials held in a well plate, and for frictional engagement therein (abstract).

13. Claims 1-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Baum 6,872,535.

FIG. 21 also shows end cap 2150 being coupled to the bottom tier of tube supports 2120 using a plug-in-socket type of sealing mechanism to an end wall of each well 2110. End caps 2150 are similarly joined in a 2D framework (not fully shown) by links 2115 between individual end caps 2150.

14. Claims 1-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Shanler, US 6,827,905.

Shanler discloses transition cover 18 (sealing plate) is unitarily molded from a plastic material. However, a machined transition cover also may be employed. Transition cover 18 includes a top wall 50 with a top surface 52 and a bottom surface 54. A plurality of side walls 56 extend down from top wall 50 and include projections 57 for releasably engaging portions of base plate 12.

Top surface 52 of top wall 50 is characterized by a plurality of upwardly projecting pipette receptacles 58 (sealing elements). Receptacles 58 are substantially tubular structures with an inner surface 60 conforming to the size and shape of pipettes 34 on dispenser head 20. Additionally, pipette receptacles 58 are disposed respectively to register with pipettes 34. In the illustrated embodiment, pipette receptacles 58 are equal in number to the number of pipettes 34. However, fewer pipette receptacles 58 can be provided.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Micklash, Kenneth J. II et al.; Coyne, Ann N. et al.; Olivier; Ste; Berray; James St. John et al.; Reed; Mark T. et al.; Roberts; Roger Q. et al.; Berna; Michael J. et al.; Seguin; Daniel J. et al.; Kelly; Christopher et al.; Lemieux; David J. et al.; Root; David et al.; Smith; Jerry W. et al.; and Terasaki; Paul I. et al. disclose plates or trays.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian R. Gordon whose telephone number is 571-272-1258. The examiner can normally be reached on M-F, 1st Fri. Off.

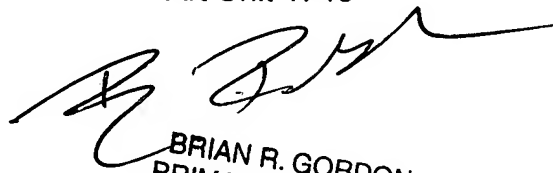
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1743

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brian R Gordon
Primary Examiner
Art Unit 1743

brg



BRIAN R. GORDON
PRIMARY EXAMINER